

APPENDIX C

HISTORICAL PRESERVATION

## CHAPTER 227-C

### STATE HISTORIC PRESERVATION OFFICE

227-C: 4 Historic Preservation Functions. The division of historical resources shall have the following functions, including, but not limited to:

I. Undertaking a statewide survey to identify and document historic properties, including all those owned by the state, its agencies and political subdivisions.

II. Preparing the state's historic preservation plan with the assistance of the office of state planning, reviewing that plan annually, and revising it accordingly.

III. Providing information on historic properties within the state to the agencies of the federal, state, regional and local governments and, when appropriate, to private individuals and organizations.

IV. Accepting moneys for historic preservation from public and private sources in the name of the state and utilizing these as conditioned by the appropriation, award, grant or donation, or, if the moneys are unencumbered, supplementing other funding to implement the annual state historic preservation plan.

V. Cooperating with federal, state, regional and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives and in overall land use planning.

VI. Coordinating the activities of regional and local government agencies in accordance with the state plan and programs for historic preservation.

VII. Providing technical and financial assistance to regional and local government agencies and private individuals and organizations involved in historic preservation activities.

VIII. Stimulating public interest in historic preservation in cooperation with other state, regional and local agencies and with other private individuals and organizations.

IX. Developing an ongoing program of historical, architectural and archeological research and development to include continuing surveys, excavation, scientific recording, interpretation and publication of the state's historical, architectural, archeological and cultural resources. A reasonable charge may be made for publications.

X. Considering proposals to erect highway historical markers under RSA 236: 41. No such marker shall be put in place without division approval. The division may make cooperative agreements with towns and historical organizations to place historic markers under RSA 236: 44.

XI. Providing technical review and comment relative to the commissioner's powers and duties in the preservation of state historic resources under RSA 227-C: 6-8.

XII. Cooperating with the state historian appointed under RSA 17-I: 3.

XIII. Cooperating with the state archivist appointed under RSA 8-B: 4.

XIV. Cooperating with and aiding municipalities in the establishment, layout and definition of historic districts under RSA 674: 45-50.

XV. Cooperating with and assisting state and local historical societies in their historic preservation activities.

XVI. Cooperating with the director, division of parks, in the administration of state public areas which are historic sites under RSA 218: 5-a, I(a) and RSA 218: 5-a, II(a).

227-C: 5 Rulemaking. The commissioner of libraries, arts and historical resources shall adopt rules, under RSA 541-A and subject to ratification by the state historical resources council, relative to:

I. Identifying and documenting historic properties, as authorized by this chapter.

II. Preparing the state's historic preservation plan, as authorized by RSA 227-C: 4, II.

III. Providing information on historic properties within the state to agencies of the federal, state, regional and local governments, as authorized by RSA 227-C: 4, III.

IV. Coordinating regional and local government activities with the state historic preservation plan and programs, as authorized by RSA 227-C: 4, VI.

V. Providing technical and financial assistance to regional and local governments involved in historic preservation activities, as authorized by RSA 227-C: 4, VII.

VI. Developing an ongoing program of historical, architectural and archeological research and development, including publication of the state's historic resources, as authorized by RSA 227-C: 4, IX.

VII. Accepting moneys for historic preservation from public and private sources, as authorized by RSA 227-C: 4, IV.

VIII. Categories of field investigations that may yield or alter historic resources, as authorized by RSA 227-C: 7, II.

IX. Standards for the conduct of field investigations, as authorized by RSA 227-C: 7, I.

X. Qualification criteria for professional and avocational archeologists for all established categories of field investigations, as authorized by RSA 227-C: 7, II.

XI. Training and certifying avocational archeologists, as authorized by RSA 227-C: 10.

XII. Employing and otherwise engaging avocational archeologists, as authorized by RSA 227-C: 3, V.

XIII. Employing consultants, as authorized by RSA 227-C: 3, III.

XIV. Issuance, revocation, suspension and extension of permits, as authorized by RSA 227-C: 7, IV.

XV. The terms of a permit, as authorized by RSA 227-C: 7, IV.

XVI. Fair and equitable allocation and distribution of historic resources recovered from a permitted field investigation, as authorized by RSA 227-C: 8, III.

XVII. Preservation agreements for the protection of historic resources released in private custody, as authorized by RSA 227-C: 8, IV.

XVIII. Temporary loans of historic resources to qualified persons or institutions within or outside the state, as authorized by RSA 227-C: 8, I(d).

XIX. Procedures for the conduct of hearings consistent with due process, as authorized by RSA 227-C: 7, V.

XX. Sale or transfer of real property, as authorized by RSA 227-C: 9, III.

XXI. Creation and organization of advisory councils, as authorized by RSA 227-C: 3, IV.

XXII. Approval of highway historical markers, as authorized by RSA 227-C: 4, X.

XXIII. Listing historic districts established under RSA 674: 46.

Source. 1981, 504: 4. 1983, 422: 4.  
1985, 346: 3.

## Preservation of State Historic Resources

**227-C: 6 State Title to Historic Resources on State Lands and Under State Waters.** The state, acting through the commissioner, reserves to itself title of ownership of all historic resources on or from:

I. Lands owned or controlled by the state, its agencies, departments, commissions, institutions or political subdivisions;

II. The bottom of navigable waters in the state, great ponds and 3 miles seaward from the New Hampshire shore in the territorial tidal waters of the state.

### **227-C: 7 Permits Issued for State Lands and Waters.**

I. To assure proper protection, investigation, interpretation and management of historic resources, and the continued availability of historic resources for scientific study by qualified persons, agencies or institutions, the state, acting through the commissioner, reserves to itself the exclusive right and privilege to conduct, or cause to be conducted, field investigations of historic resources that involve the alteration of the surface or subsurface of the resource and removal of any surface or subsurface objects.

II. The commissioner shall establish categories of field investigations that may yield or alter historic resources and qualification criteria for professional and avocational archeologists for all categories of field investigations.

III. For purposes of determining proper persons to whom permits may be issued, the original discoverer of a previously unrecorded historic resource shall be conclusively presumed to be an appropriate person to actively participate in all phases of subsequent field investigations and shall be eligible to receive a permit under the rules adopted by the commissioner.

IV. The division shall issue a permit to any person, agency or institution upon application to conduct field investigations in accordance with the rules adopted by the office. When the division denies, revokes, suspends or refuses to extend a permit, it shall issue a written statement describing the deficiencies in the permit application and the reasons for the action taken.

V. The commissioner may conduct hearings upon receiving written complaint from any person, including a council member, concerning the issu-

CHAPTER xxxxx HISTORIC PRESERVATION REVIEW PROCEDURES

PART xxxxx POLICY

Res xxxxx Purpose and Intent. Historic Preservation Review is a consultation process which seeks to identify significant historic properties and to avoid or minimize harm to these properties from government-aided actions.

(a) It is intended to be a conflict-resolution process which balances the public interest in historic properties with the public benefit from government actions.

(b) Historic properties significant in history, architecture, archeology, engineering and culture are recognized by both state and federal government as resources to be preserved and interpreted for the benefit of all citizens. They are important to our individual and corporate identity, and worthy of proper protection, investigation, interpretation and management.

(c) This policy does not mean that all properties of a sufficient age to be considered historic are significant resources, and it does not mean that all significant resources can or should be saved. Rather, it is a directive not to needlessly destroy tangible resources of our cultural heritage, and to seek conditions under which significant historic resources can exist in harmony with government-aided social and economic changes.

(d) For historic preservation review to work effectively for all parties, those involved must adhere to procedures, justify their arguments, and respect the opinion of others. The procedures delineate specific roles and provide for checks and balances, thereby ensuring an unbiased application of national standards of significance and preservation options.

PART xxxxx STATUTORY AUTHORITY

Res xxxxx Federal Review. All federally funded, assisted, and licensed projects in New Hampshire are subject to the review requirements of Section 106 of the National Historic Preservation Act of 1966 (P.L. 89-665), as amended, as implemented by the federal Advisory Council on Historic Preservation's "Procedures for the Protection of Historic Properties" (36 CFR 800). Federal agencies or their legally-designated agents are required as a first step to submit proposed project to the New Hampshire State Historic Preservation Officer for a determination of potential effects on properties listed, or eligible for listing, in the National Register of Historic Places. Historic preservation review is conducted pursuant to 36 CFR 800. It is independent of, and does not supplant or supersede any local reviews/approvals required by municipal planning, zoning, site plan, pollution control, and/or historic district regulations.

Res xxxxx State Review. All New Hampshire state licensed, assisted, or contracted projects, activities, or programs are subject to the review requirements of RSA 227-C:9, as implemented by the rules herein. State agencies, departments, commissions, and institutions are required as a first step to submit such undertakings to the New Hampshire State Historic Preservation Officer for an initial determination as to whether such proposed actions are located in or may affect historic resources. Historic preservation review is independent of, and does not supplant or supersede, any local reviews/approvals required by municipal planning, zoning, site plan, pollution control, and/or historic district regulations.

Res xxxxx Applicability. State agencies, departments, commissions, and institutions are directed to cooperate in the protection of historic resources by notifying the Division of Historical Resources/State Historic Preservation Office of state licensed, assisted, or contracted projects, activities, or programs to determine the effect of such undertakings on historic resources, by allowing time for the conduct of field investigations, by financial support for field investigations, and by deferring or conditioning the sale or transfer of state property with historic resources as recommended by the commissioner.

#### PART xxxxx STANDARDS AND CRITERIA FOR EVALUATIONS

Res xxxxx National Register of Historic Places Criteria for Evaluation. These criteria (currently found at 36 CFR 60.6) shall be used to identify historic districts, sites, buildings, structures and objects that are worthy of protection and are located within the proposed project area.

Res xxxxx Criteria of Effect and Adverse Effect. These criteria (currently found at 36 CFR 800.9) shall be used to determine the effect of a proposed state action on the historical, architectural, archeological, engineering or cultural value, quality or characteristics of an identified historic resource. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance as a historic resource.

Res xxxxx Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines. This document (as published September 29, 1983, found at 48 FR 44716) contains performance standards, professional qualification, preservation technology, and guidelines for carrying out historic preservation planning, identification and evaluative studies of historic resources, and registration and documentation of properties. These standards and guidelines shall be used for field investigations, historic building reports, and proposed preservation treatment.

Res xxxxx Secretary of the Interior's Standards for Historic Preservation Projects. These standards (currently found at 36 CFR 67), together with those in the above-referenced Secretary's Standards, shall be used to determine appropriate measures for protection, stabilization, preservation, rehabilitation, restoration, and reconstruction of historic resources.

Res xxxxx Recommendations for Building Rehabilitation. These historic building rehabilitation techniques for masonry cleaning, restoration specification, exterior siding materials, and the like, shall be used in the restoration or rehabilitation of state historic buildings. These recommendations are contained in publications of the Technical Preservation Services Division of the U.S. Department of the Interior and other technical building conservation series listed in a handout made available through the Division of Historical Resources.

#### PART xxxxx REVIEW PROCEDURES AND FINDINGS

Res xxxxx Notification. Notices of all proposed state actions shall be submitted to the Division of Historical Resources for review and initial determination as to whether proposed actions are located in or may affect historic resources. The form such notification is made in may vary according to agency needs, but to facilitate the review all notices shall contain the name, address and telephone number of the project sponsor and a brief description of the proposed project (location, proposed action, and purpose) or a draft copy of the application to the grantor agency.

Res xxxxx Further Review Required. When the State Historic Preservation Officer finds that the proposed state action is located in or may have an effect on historic resources known or expected to exist within the project area, the agency shall be notified that "further review is required". The agency shall be requested to submit or make available the following additional information:

- (a) The name, address, and telephone number of the project sponsor (agency) and the principal contact person;
- (b) a brief description of the proposed project, or a copy of the application to the grantor agency;
- (c) a topographical map showing the location of the proposed project in an area context (a photocopy of the relevant portion of a USGS quadrangle map is preferred);
- (d) a larger-scale map, diagram, or site plan, showing the project and site in relationship to the immediate setting; the drawing should indicate compass orientation, contours, general soil types, distance to surface water, proximity to roads, and location of existing structures, stone walls, specialized uses such as earlier dump sites, roads, trails, dams, canals, bridges, foundations, ruins, etc.;
- (e) a very brief description of the current uses of the site; former uses, with approximate dates (if known); and the type of any past disturbance or alteration of the site, such as filling, grading, excavation, paving, cultivation, demolition of structures (if known);
- (f) photographs of the site and its immediate setting (adjoining buildings, sites, and agricultural, residential, commercial, industrial, or open space, which might be affected by the proposed project)-- clear photographs of 3"x5" size are acceptable;
- (g) if the project is for new construction, sketch plans and elevations should be submitted; if the project involves rehabilitation, snapshots of the portion/s of the structure/s where rehabilitation or demolition is to occur should be provided, in addition to the plans and elevations. Rehabilitation work must be in conformance with the Secretary of the Interior's "Standards for Rehabilitation" Treatment of building materials and components should be in accordance with National Park Service technical recommendations in the "Preservation Briefs" series.

As necessary, the agency shall be requested to cooperate with the Division of Historical Resources, and to fund or to assist in obtaining needed funds, to conduct surveys and assessments to identify and evaluate historical, architectural, archeological, engineering and cultural resources. And, the agency may be asked to consider recommendations for redesign of the project or to accept measures that would avoid adverse effects on an historic resource.

Res xxxxx Findings that Conclude the Review Process. Findings that conclude the state review process, which means the project may proceed as proposed or as conditioned, are:

- (a) "No Properties in the Impact Area", which means no properties are listed in the National Register of Historic Places, no potentially significant properties are known to exist, no potentially significant resources are expected to exist, and no surveys or assessments are required.
- (b) "No Effect", which means a National Register property is present, or a potentially significant property and/or resource is known or expected to exist, but the project will not affect those characteristics which qualify the property/resource for the National Register.
- (c) "Conditional No Effect", which is similar to (b) above, except that measures have been mutually agreed upon to avoid any effect on the property/resource.
- (d) "No Adverse Effect", which means a National Register or Register-eligible property will be affected, but the effects are either beneficial or exceptions to the criteria of adverse effect (as currently found at 36 CFR 800.9(c)).
- (e) "Conditional No Adverse Effect", which is similar to (c) above, except that measures have been mutually agreed upon, and which must be implemented, to warrant exception to the criteria of adverse effect.

Res xxxxx Concluding the Review Process through Consultation. Consultation is the process of negotiating and working toward resolving conflicts between undertakings and the values of significant properties in a manner that reflects the public interest rather than a purely preservation interest, or a purely project interest; this may require the State Historic Preservation Officer to serve as mediator between the polar extremes of agencies and interest groups. Consultation is characterized as follows:

- (a) It occurs when a property listed or potentially eligible for listing in the National Register will be affected adversely by a state action.
- (b) Consulting parties (SHPO, state agencies, sponsor, historic district commissions and/or other local interest groups or local government agencies) consider ways to avoid or mitigate the adverse effects of the undertaking on the significant properties.
- (c) Negotiation focuses on alternative ways of accomplishing the purposes of an undertaking without unacceptably damaging significant properties. Included in consultation are alternative undertakings and alternative designs, as well as "no undertaking" when other alternatives would severely harm a property of outstanding significance.
- (d) The aim of negotiation is an integrated solution to the conflict caused by the competing interests, or by the way in which each party proposes to meet its interests.
- (e) Successful consultation resolves a conflict in a way that the consulting parties agree best serves the public interest.



Res xxxxx Memorandum of Agreement (MOA). A memorandum of agreement (MOA) is the document which concludes a successful consultation, and it signifies an acceptance of lasting adverse effects, even after mitigating measures are completed. The MOA stipulates those measures to reduce the adverse effects.

Res xxxxx Referral to CORD. In cases of unresolved disputes between the State Historic Preservation Officer and the affected agency concerning the protection of a historic resource, the State Historic Preservation Officer shall request the New Hampshire Council on Resources and Development (CORD) to resolve such conflicts. The decision of CORD shall be binding on all parties.

MEMORANDUM OF AGREEMENT

Between

The Department of Libraries, Arts and Historical Resources  
Division of Historic Resources

and

The Office of State Planning

Whereas; The State of New Hampshire wishes to participate in the Coastal Program, authorized by Congress in the Coastal Zone Management Act and administered by the Department of Commerce, and

Whereas; The CZMA encourages states participating in the program to significantly improve their Coastal Programs, and

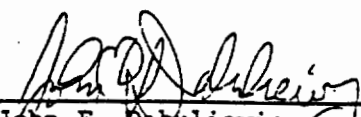
Whereas; The Division of Historic Resources, State Historic Preservation Office was formerly notified only of projects proposed in the Portsmouth Historic District that would have produced more than five thousand gallons of sewage flow a day, and

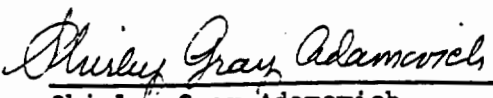
Whereas; The need exist for a reliable system of notifying the Division of Historic Resources, State Historic Preservation Office of significant proposed actions within the Portsmouth Historic District in order for the office to exert the full extent of its authorities,


Therefore, It is hereby agreed that the Office of State planning will monitor building permit applications in the City of Portsmouth in order to forward them for review by the Division of Historic Resources as applicable. This will be done on a regular basis to assure that any projects requiring that office's review are forwarded to it in a timely manner.

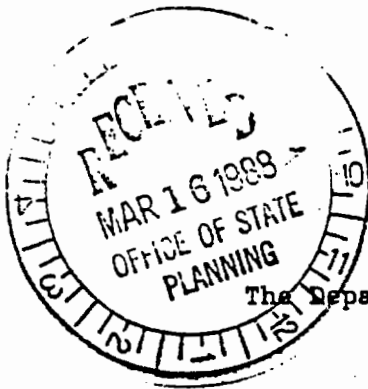
The Division of Historic Resources agrees to review these projects against the criteria set out in the draft administrative rules of February, 1987 which shall succeed the Office's rules set out in the New Hampshire Code of Administrative Rules Res-H 400.

The effective date of this agreement will be the latest date of signature.

 3/8/88  
John E. Dabuliewicz Date  
Director  
Office of State Planning

 3/9/88  
Shirley Gray Adamovich Date  
Commissioner  
Department of Libraries, Arts and  
Historical Resources

 3/14/88  
Stuart Wallace Date  
Director  
Division of Historic Resources  
State Historic Preservation Officer



MEMORANDUM OF AGREEMENT

Between

The Department of Libraries, Arts and Historical Resources  
Division of Historic Resources

and

The Office of State Planning

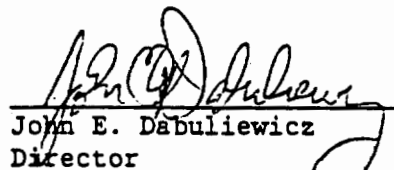
Whereas; The State of New Hampshire wishes to participate in the Coastal Program, authorized by Congress in the Coastal Zone Management Act and administered by the Department of Commerce, and

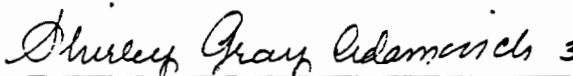
Whereas; The CZMA encourages states participating in the program to significantly improve their Coastal Programs, and

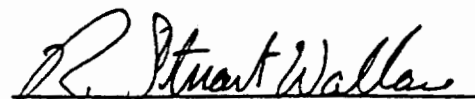
Whereas; The Division of Historic Resources/ State Historic Preservation Office and the Office of State Planning have agreed to a joint monitoring of building permit applications in the City of Portsmouth, and

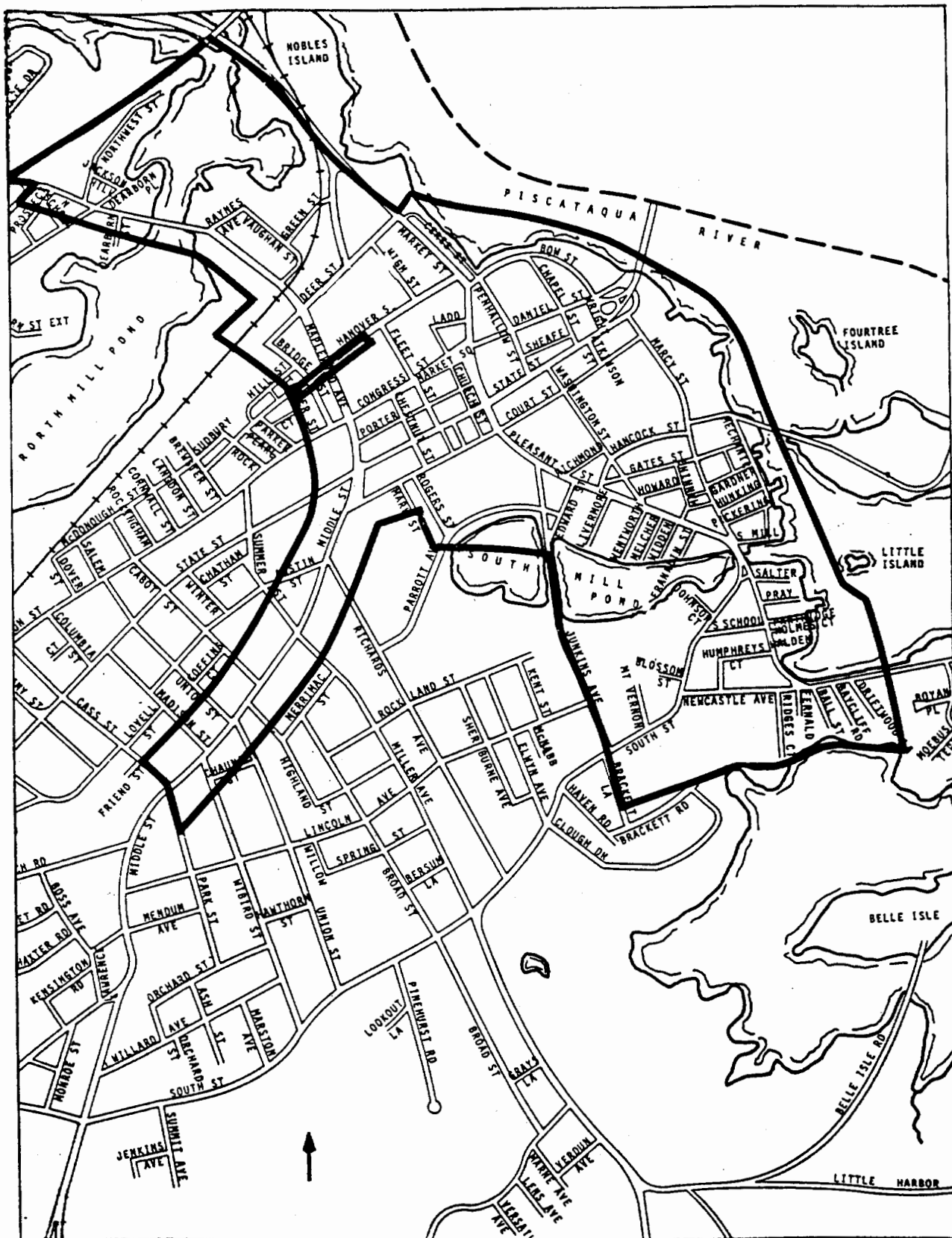
Whereas; The need exists for a more defined review process and specific review criteria,

Therefore; It is hereby agreed that the Division of Historic Resources will review significant proposed actions in the Portsmouth Historic District by reference to the draft administrative rules of February, 1987 (attached) until such time as the final rules are adopted. The Division of Historic Resources agrees to adopt the final rules prior to December 31, 1988.

 3/8/88  
John E. Dabuliewicz                      Date  
Director  
Office of State Planning

 3/9/88  
Shirley Gray Adamovich                      Date  
Commissioner  
Department of, Libraries Arts  
and Historical Resources

 3/14/88  
Stuart Wallace                      Date  
Director  
Division of Historic Resources  
State Historic Preservation Officer



CITY OF PORTSMOUTH  
 Historic District Covered by Memorandum of Agreement